

installment agreement or proposed installment agreement relates is in jeopardy.

(b) *Other actions by the IRS while levy is prohibited*—(1) *In general.* The IRS may take actions other than levy to protect the interests of the Government with regard to the liability identified in an installment agreement or proposed installment agreement. Those actions include, for example—

(i) Crediting an overpayment against the liability pursuant to section 6402;

(ii) Filing or refiling notices of Federal tax lien; and

(iii) Taking action to collect from any person who is not named in the installment agreement or proposed installment agreement but who is liable for the tax to which the installment agreement relates.

(2) *Proceedings in court.* Except as otherwise provided in this paragraph (b)(2), the IRS will not refer a case to the Department of Justice for the commencement of a proceeding in court, against a person named in an installment agreement or proposed installment agreement, if levy to collect the liability is prohibited by paragraph (a)(1) of this section. Without regard to whether a person is named in an installment agreement or proposed installment agreement, however, the IRS may authorize the Department of Justice to file a counterclaim or third-party complaint in a refund action or to join that person in any other proceeding in which liability for the tax that is the subject of the installment agreement or proposed installment agreement may be established or disputed, including a suit against the United States under 28 U.S.C. 2410. In addition, the United States may file a claim in any bankruptcy proceeding or insolvency action brought by or against such person. If a person named in an installment agreement is joined in a proceeding, the United States obtains a judgment against that person, and the case is referred back to the IRS for collection, collection will continue to occur pursuant to the terms of the installment agreement.

(c) *Statute of limitations*—(1) *Suspension of the statute of limitations on collection.* The statute of limitations under section 6502 for collection of any liability

shall be suspended during the period that a proposed installment agreement relating to that liability is pending with the IRS, for 30 days immediately following the rejection of a proposed installment agreement, and for 30 days immediately following the termination of an installment agreement. If, within the 30 days following the rejection or termination of an installment agreement, the taxpayer files an appeal with the IRS Office of Appeals, the statute of limitations for collection shall be suspended while the rejection or termination is being considered by Appeals. The statute of limitations for collection shall continue to run if an exception under paragraph (a)(4) of this section applies and levy is not prohibited with respect to the taxpayer.

(2) *Waivers of the statute of limitations on collection.* The IRS may continue to request, to the extent permissible under section 6502 and § 301.6159-1, that the taxpayer agree to a reasonable extension of the statute of limitations for collection.

(d) *Effective date.* This section is applicable on December 18, 2002.

[T.D. 9027, 67 FR 77417, Dec. 18, 2002]

§ 301.6332-1 Surrender of property subject to levy.

(a) *Requirement*—(1) *In general.* Except as otherwise provided in § 301.6332-2, relating to levy in the case of life insurance and endowment contracts, and in § 301.6332-3, relating to property held by banks, any person in possession of (or obligated with respect to) property or rights to property subject to levy and upon which a levy has been made shall, upon demand of the district director, surrender the property or rights (or discharge the obligation) to the district director, except that part of the property or rights (or obligation) which, at the time of the demand, is actually or constructively under the jurisdiction of a court because of an attachment or execution under any judicial process.

(2) *Levy on bank deposits held in offices outside the United States.* Notwithstanding subparagraph (1) of this paragraph (a), if a levy has been made upon property or rights to property subject to levy which a bank engaged in the banking business in the United States

or a possession of the United States is in possession of (or obligated with respect to), the Commissioner shall not enforce the levy with respect to any deposits held in an office of the bank outside the United States or a possession of the United States, unless the notice of levy specifies that the district director intends to reach such deposits. The notice of levy shall not specify that the district director intends to reach such deposits unless the district director believes—

(i) That the taxpayer is within the jurisdiction of a U.S. court at the time the levy is made and that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office of the bank outside the United States or a possession of the United States; or

(ii) That the taxpayer is not within the jurisdiction of a U.S. court at the time the levy is made, that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office outside the United States or a possession of the United States, and that such deposits consist, in whole or in part, of funds transferred from the United States or a possession of the United States in order to hinder or delay the collection of a tax imposed by the Code. For purposes of this subparagraph, the term “possession of the United States” includes Guam, the Midway Islands, the Panama Canal Zone, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Wake Island.

(b) *Enforcement of levy*—(1) *Extent of personal liability.* Any person who, upon demand of the district director, fails or refuses to surrender any property or right to property subject to levy is liable in his own person and estate in a sum equal to the value of the property or rights not so surrendered, together with costs and interest. The liability, however, may not exceed the amount of the taxes for the collection of which the levy was made. Interest is to be computed at the annual rate referred to in regulations under section 6621 from the date of the levy, or, in the case of a continuing levy on salary or wages (see section 6331(d)(3)), from the date the person would otherwise have been obligated to pay over the wages or

salary to the taxpayer. Any amount recovered, other than cost, will be credited against the tax liability for the collection of which the levy was made.

(2) *Penalty for violation.* In addition to the personal liability described in subparagraph (1) of this paragraph (b), any person who is required to surrender property or rights to property and who fails or refuses to surrender them without reasonable cause is liable for a penalty equal to 50 percent of the amount recoverable under section 6332(d)(1). No part of the penalty described in this subparagraph shall be credited against the tax liability for the collection of which the levy was made. The penalty described in this subparagraph is not applicable in cases where bona fide dispute exists concerning the amount of the property to be surrendered pursuant to a levy or concerning the legal effectiveness of the levy. However, if a court in a later enforcement suit sustains the levy, then reasonable cause would usually not exist to refuse to honor a later levy made under similar circumstances.

(c) *Effect of honoring levy*—(1) *In general.* Any person in possession of, or obligated with respect to, property or rights to property subject to levy and upon which a levy has been made who, upon demand by the district director, surrenders the property or rights to property, or discharges the obligation, to the district director, or who pays a liability described in paragraph (b)(1) of this section, is discharged from any obligation or liability to the delinquent taxpayer and any other person with respect to the property or rights to property arising from the surrender or payment.

(2) *Exception for certain incorrectly surrendered property.* Any person who surrenders to the Internal Revenue Service property or rights to property not properly subject to levy in which the delinquent taxpayer has no apparent interest is not relieved of liability to a third party who has an interest in the property. However, if the delinquent taxpayer has an apparent interest in property or rights to property, a person who makes a good faith determination that such property or rights to property in his or her possession has been levied upon by the Internal Revenue

Service and who surrenders the property to the United States in response to the levy is relived of liability to a third party who has an interest in the property or rights to property, even if it is subsequently determined that the property was not properly subject to levy.

(3) *Remedy.* In situations described in paragraphs (c)(1) and (c)(2) of this section, taxpayers and third parties who have an interest in property surrendered in response to a levy may secure from the Internal Revenue Service the administrative relief provided for in section 6343(b) or may bring suit to recover the property under section 7426.

(4) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples:

Example 1. M Bank is served with a notice of levy for an unpaid tax liability due from A in the amount of \$2,000. M Bank holds \$2,000 in a checking account in the names of A or B or C. Although all of the deposits into the account were made by B and C, A has an unrestricted right to withdraw the funds from the account. M Bank surrenders the entire account to the district director at the end of the holding period provided in section 6332(c). Under paragraph (c)(1) of this section, M Bank is not liable to B or C for any amount, even if B or C prove that the funds in the account did not belong to A, because A's unrestricted right to withdraw the funds is an interest which is subject to levy. B or C may, however, seek the return of the funds from the United States as provided in sections 6343(b) and 7426 of the Internal Revenue Code.

Example 2. A is indebted to B for \$400. Unbeknownst to A, B has assigned his right to receive payment to C. A is served with a notice of levy for an unpaid tax liability due from B for \$400. A, acting with no knowledge of the assignment to C, surrenders \$400 to the district director. A is discharged from his obligation to pay B, the taxpayer. Under paragraph (c)(2) of this section, because B had an apparent interest in the funds that A owed to B, and because A determined in good faith that those funds had been levied upon, A is also discharged from any liability to C, even though the money is not properly subject to levy. C may, however, seek return of the payment from the United States as provided in sections 6343(b) and 7426 of the Internal Revenue Code.

Example 3. M Bank is served with a notice of levy for an unpaid tax liability due from "John H. Smith, Sr." in the amount of \$5,000. M Bank fails to read the notice of levy carefully. When searching its records, M Bank finds the name of "John H. Smith, Jr." and

looks no further. M Bank surrenders \$5,000 from John H. Smith, Jr.'s checking account to the district director. M Bank is not discharged from liability under section 6332(e) of the Internal Revenue Code because the delinquent taxpayer (John H. Smith, Sr.) had no apparent interest in the account of John H. Smith, Jr. (Generally, John H. Smith Jr. may seek return of the payment from the United States as provided in sections 6343 and 7426 of the Internal Revenue Code.)

Example 4. M Bank is served with a notice of levy for an unpaid tax liability due from "Robert A. Jones" in the amount of \$5,000. M Bank searches its records and identifies four separate accounts of \$1,000 each in the name of "Robert A. Jones." All four accounts list different addresses and social security identification numbers. M Bank surrenders all four accounts totalling \$4,000 in response to the levy. M Bank could not in good faith have determined that all four accounts were levied upon. Therefore, M Bank is not discharged from liability to any person other than the taxpayer whose account was levied upon.

(5) *Effective date.* Paragraph (c) of this section is effective January 11, 1993. However, persons surrendering property to the Internal Revenue Service may rely on the regulations with respect to levies issued after November 10, 1988.

(d) *Person defined.* The term "person," as used in section 6332(a) and this section, includes an officer or employee of a corporation or a member or employee of a partnership, who is under a duty to surrender the property or rights to property or to discharge the obligation. In the case of a levy upon the salary or wages of an officer, employee, or elected or appointed official of the United States, the District of Columbia, or any agency or instrumentality of either, the term "person" includes the officer or employee of the United States, of the District of Columbia, or of such agency or instrumentality who is under a duty to discharge the obligation. As to the officer or employee who is under such duty, see paragraph (a)(4)(i) of § 301.6331-1.

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